Koblenz, March 29, 2021

# Joint Report

**of CompuGroup Medical Management SE**

as General Partner of CompuGroup Medical SE & Co. KGaA

**and**

**the Executive Board of CGM Clinical Europe GmbH**

on the conclusion and content of the

**Profit Transfer Agreement dated March 29, 2021, between**

**CompuGroup Medical SE & Co. KGaA**

as Controlling Entity

and

**CGM Clinical Europe GmbH**

as Controlled Entity

PricewaterhouseCoopers Legal
Aktiengesellschaft Rechtsanwaltsgesellschaft

On March 29, 2021,

(1) **CompuGroup Medical SE & Co. KGaA**, a partnership limited by shares under German law, with its registered office in Koblenz and its business address at Maria Trost 21, 56070 Koblenz, registered with the Commercial Register of the Koblenz Local Court under number HRB 27430 ("**Controlling Entity**" (*Organträgerin*)),

and

(2) **CGM Clinical Europe GmbH**, a limited liability company under German law, with its registered office in Koblenz and its business address at Maria Trost 21, 56070 Koblenz, entered in the Commercial Register of the Local Court of Koblenz under number HRB 27136 ("**Controlled Entity**" (*Organgesellschaft*)),

Controlling Entity and Controlled Entity together hereinafter referred to as the "**Parties**,"

concluded a profit transfer agreement (the "**Agreement**"). In order to become effective under civil law, the Agreement requires the approval of the General Meeting of the Controlling Entity and the Shareholders' Meeting of the Controlled Entity. In addition, it must be entered in the Commercial Register of the Controlled Company. The Agreement should therefore be submitted to the General Meeting of the Controlling Entity and the Shareholders' Meeting of the Controlled Entity for approval.

In preparation for the adoption of the resolution by the General Meeting of the Controlling Entity, the Executive Directors of CompuGroup Medical Management SE, the General Partner of the Controlling Entity, and the management of the Controlled Entity hereinafter submit a Joint Report under § 293a of the German Stock Corporation Act (AktG**)** in which they explain and justify the conclusion and the content of the Agreement in legal and economic terms.

**Preliminary remarks:**

(A) The shares in the Controlled Entity are held in full (100%) by **CompuGroup Medical CEE GmbH**, a limited liability company under the laws of the Republic of Austria, with its registered office in Vienna, entered in the Commercial Register under number FN 283546 f ("**Shareholder**"). The shares in the Shareholder are in turn held in full (100%) by the Controlling Entity.

(B) This is therefore a case of what is known as parent company/*subsubsidiary* relationship (i.e. a tax group between the parent company and its sub-subsidiary without inclusion of the interposed subsidiary (*Klammerorganschaft*)).

For the purpose of informing the shareholders or the partners of the parties involved, the executive directors of the General Partner of the Controlling Entity and the management of the Controlled Company jointly submit the following report under Section 293a of the German Stock Corporation Act (AktG):

## 1. Parties

The Parties are the Controlling Entity and the Controlled Entity.

1.1 CompuGroup Medical SE & Co. KGaA

The Controlling Entity is a partnership limited by shares with its registered office in Koblenz, registered with the Commercial Register of the District Court of Koblenz under number HRB 27430. The General Partner (*Komplementärin*) of the Controlling Entity is **CompuGroup Medical Management SE**, a European company (*Societas Europaea*) with its registered office in Koblenz, registered with the Commercial Register of the District Court of Koblenz under number HRB 27343.

The Controlling Entity is the de facto parent company of the CGM Group (**CGM**). CGM employs approximately 8,000 people in 18 countries and has approximately 1.6 million professional users. CGM is thus one of the world's leading eHealth companies. Almost every second doctor in Germany already works daily with one of these market-leading doctor and dentist information systems. In Germany, CGM also offers solutions for efficient and secure eHealth management for hospitals, medical care centers, social institutions, laboratories, and specialty and rehabilitation clinics. For pharmacies, CGM LAUER offers modern, networked software that bolsters the pharmacist's consultative role, improves patient safety, and at the same time helps to save time and costs.

The financial year of the Controlling Entity is the calendar year.

Pursuant to its Articles of Association, the purpose of the company is to hold and administer equity interests in other companies in the IT sector, the sector involving electronic networks, and the health sector, the development, production, and sale of products, as well as the trade in products from the IT sector, the sector involving electronic networks, and the health sector, as well as the performance and brokerage of services in the IT sector, the sector involving electronic networks, and the health sector. For this purpose, the Controlling Entity may also engage in operations itself. It is authorized to conduct all business and measures that appear necessary or useful to achieve the company purpose, especially to establish and to acquire, as well as to take an equity interest in, other companies of the same or similar kind, to take over their management and representation, as well as to set up branches in Germany and abroad. The Controlling Entity may limit its activities to a part of the above areas, combine companies in which it holds a majority interest under its management, or limit its activities to the management of its shareholdings.

The share capital of the Controlling Entity amounts to EUR 53,734,576.00 (in words: fifty-three million seven hundred and thirty-four thousand five hundred and seventy-six euros). It is divided into 53,734,576 no-par value registered shares. Under Section 4 (3) of the Articles of Association, the General Partner is authorized, with the approval of the Supervisory Board, to increase the share capital of the Controlling Entity on one or more occasions until May 12, 2025, by up to a total of EUR 26,094,449 by issuing new shares against cash and/or non-cash contributions (Authorized Capital 2020). The General Partner is authorized, with the approval of the Supervisory Board, to determine the content of the share rights, the details of the capital increase, and the conditions of the share issue from the Authorized Capital. The new shares may also be underwritten by one or more credit institutions or companies within the meaning of Section 186 (5) sentence 1 German Stock Corporation Act (AktG) with the obligation to offer them to the company's shareholders for subscription (indirect subscription right). The General Partner is authorized, with the approval of the Supervisory Board, to exclude shareholders' subscription rights.

The share capital is conditionally increased by an amount of up to EUR 21,287,740 under Section 4 (4) of the Articles of Association (Contingent Capital 2017).

In accordance with Section 4 (5) of the Articles of Association, the share capital is conditionally increased by an amount of up to EUR 5,321,935 (Contingent Capital 2019).

Within the Controlling Entity or its General Partner, there are four corporate bodies that manage and supervise the business of the Controlling Entity. These are the Executive Directors of the General Partner, the Supervisory Board of the Controlling Entity and the Administrative Board of the General Partner. In addition, the Controlling Entity has a joint committee consisting of six members. Three of the members are delegated by the General Partner, the other three members by the Supervisory Board of the Controlling Entity.

The Controlling Entity is represented by its General Partner. The General Partner is in turn represented by its Executive Directors. The Executive Directors of the General Partner are:

| | |
|---|---|
| Dr. Dirk Wössner; | Dr. Eckart Pech; |
| Mr. Frank Brecher; | Mr. Dirk-Michael Rauch; |
| Dr. Ralph Andreas Körfgen; | Mr. Hannes Michael Reichl. |

The Supervisory Board is composed of twelve members with equal representation. The members of the Supervisory Board are:

| **Shareholder representatives** | **Employee representatives** |
|---|---|
| Mr. Philipp von Ilberg (Chairman); | Mr. Sven Thomas Müller (Vice Chairman); |
| Dr. Michael Fuchs; | Ms. Claudia Frevel; |
| Dr. Ulrike Handel; | Ms. Ursula Keller; |
| Prof. Dr. Martin Köhrmann; | Mr. Volker Kohl; |
| Mr. Matthias Störmer; | Ms. Julia Mole; |
| Dr. Bettina Volkens; | Mr. Andreas Wiese. |

The Administrative Board of the General Partner is composed of the following five members:

Mr. Frank Gotthardt (Chairman);

Dr. Klaus Esser (Deputy Chairman);

Prof. (apl.) Daniel Gotthardt, MD;

Dr. Dirk Wössner;

Ms. Stefanie Peters.

1.2 CGM Clinical Europe GmbH

The Controlled Entity is a limited liability company under German law, with its registered office in Koblenz, registered with the Commercial Register of the District Court of Koblenz under number HRB 27136.

The sole shareholder of the Controlled Entity is **CompuGroup Medical CEE GmbH**, a limited liability company under the laws of the Republic of Austria, with its registered office in Vienna, registered with the Austrian Commercial Register under number FN 283546 f.

Pursuant to its Articles of Association, the purpose of the Controlled Entity is the development and sale of software and communications solutions and related and other information-processing products, including services, in particular for hospitals, as well as the holding and management of investments in other companies in this sector. The Controlled Entity will provide these services particularly in Germany.

The financial year of the Controlled Entity runs from August 1 of a year to July 31.

The share capital of the Controlled Entity amounts to EUR 25,000 and is divided into 25,000 shares with a nominal value of EUR 1 each.

The Controlled Entity is jointly represented by its Managing Directors. These are:

Mr. Christoph Becker;

Mr. Bernhard Calmer;

Mr. Michael Schösser.

## 2. Explanation of the profit transfer agreement

A profit transfer agreement is an inter-company agreement within the meaning of Section 291 (1) sentence 1, alt. 2 German Stock Corporation Act (AktG), by which a company undertakes to transfer "*all its profits*" to another company. The following is a presentation of the Agreement and an explanation of its provisions:

2.1 Transfer of profits – Clause 1 of the Agreement

Under Clause 1.1 of the Agreement, the Controlled Entity undertakes to transfer to the Controlling Entity during the term of the Agreement its entire profit, but at most, in accordance with Section 301 sentence 1 of the German Stock Corporation Act (AktG), as amended, the annual net profit arising without the profit transfer, less any loss carried forward from the previous year, less an amount to be allocated to the statutory reserve in accordance with Section 300 of the German Stock Corporation Act (AktG) and less the amount blocked from distribution in accordance with Section 268 (8) of the German Commercial Code (HGB).

The profit transfer may therefore not exceed the maximum amount specified in Section 301 sentence 1 of the German Stock Corporation Act (AktG), as amended.

2.2 Loss absorption – Clause 2 of the Agreement

The Controlling Entity is required to absorb the losses of the Controlled Entity in accordance with the provisions of Section 302 of the German Stock Corporation Act (AktG), as amended. Accordingly, the Controlling Entity is required to offset any net loss otherwise arising during the term of the Agreement – i.e., irrespective of the obligation to offset losses – insofar as this is not offset by withdrawing amounts from other revenue reserves that were transferred to them during the term of the Agreement.

For the intended establishment of a fiscal unity for income tax purposes between the Parties, the regulation of such an obligation of the Controlling Entity to compensate for any losses of the Controlled Entity is mandatory (Section 17 (1) sentence 2 no. 2 of the German Law on Corporation Tax (KStG)).

The Controlled Entity is entitled, with the consent of the Controlling Entity, to allocate amounts from the net income for the year to other revenue reserves (revenue reserves under Section 272 (3) sentence 2 alt. 3 HGB), insofar as this is permissible under commercial law and economically justified on the basis of a reasonable commercial assessment. Other revenue reserves formed during the term of the Agreement in accordance with Section 272 (3) sentence 2 alt. 3 German Commercial Code (HGB) must be dissolved at the request of the Controlling Entity and used to offset a net loss for the year or transferred as profit in accordance with Section 302 German Stock Corporation Act (AktG), as amended. The transfer of amounts from the release of capital reserves or of revenue reserves or retained earnings formed prior to the entry into force of this Agreement is excluded. The provisions in Clause 2 of the Agreement are standard provisions of a profit transfer agreement.

2.3 Preparation of the annual accounts – Clause 3 of the Agreement

Under Clause 3 of the Agreement, the Controlled Company must submit its annual accounts to the Controlling Entity for information, examination, and approval before they are adopted. In addition, the Controlled Entity must prepare and adopt its annual accounts before the annual accounts of the Controlling Entity, and the Controlling Entity must already take into account the results of the Controlled Entity to be acquired in its annual accounts if the financial years of both Parties end at the same time.

This is a standard requirement in order to be able to obtain the necessary information from the Controlling Entity at an early stage for the preparation of its own annual accounts.

2.4 Information rights – Clause 4 of the Agreement

Under Clause 4.1 of the Agreement, the Controlling Entity has the right to request information from the management of the Controlled Entity at any time regarding the legal, business, and administrative affairs of the Controlled Entity. In addition, the Controlling Entity may also inspect the books and business records of the Controlled Entity.

Under Clause 4.2 of the Agreement, the Controlled Entity is also required to keep the Controlling Entity informed of its business development on an ongoing basis. This applies in particular to material business transactions.

This rule is based on the fact that the Controlling Entity is required to offset any losses incurred by the Controlled Entity. In order to be able to take this obligation into account accordingly and, if necessary, to be able to take measures in this regard on its part, the Controlling Entity must remain informed about the business development of the Controlled Entity on an ongoing basis.

2.5 Entry into force, duration of the Agreement, termination – Clause 5 of the Agreement

Under Clause 5.1, the Agreement will become effective subject to the approval of the General Meeting of the Controlling Entity and the Shareholders' Meeting of the Controlled Entity, as well as the registration with the Commercial Register of the registered office of the Controlled Entity.

The provision clarifies that an early conclusion of the Agreement only becomes effective if the other conditions for effectiveness are also met. This in turn ensures that the Agreement will not take effect if any of the required conditions are not met.

The Agreement applies for the first time to the fiscal year of the Controlled Entity starting on August 1, 2020, but at the earliest to the fiscal year of the Controlled Entity in which the Agreement takes effect. The Agreement was concluded for an indefinite period. The Agreement has a minimum term of five years and can subsequently be terminated with three months' notice. The five-year minimum term takes into account the provision in Section 14 (1) sentence 1 no. 3 sentence 1 of the German Law on Corporation Tax (KStG), according to which the fiscal unity can only become effective if the profit transfer agreement is concluded and also implemented for at least five (time) years.

The Parties reserve the right to terminate the Agreement for cause or by mutual consent. The Agreement contains standard examples of important reasons; these are not exhaustive. An extraordinary right of termination exists in particular if

(a) the shares in the Controlled Entity are to be transferred;

(b) one of the Parties is to be merged, split, or liquidated;

(c) the Controlled Entity is to be converted into a legal form other than that of a corporation;

(d) the registered office or administrative headquarters of the Controlled Entity or the Controlling Entity is to be relocated abroad and the tax group thereby ceases to exist.

The above standard examples represent the most common reasons for premature extraordinary termination of a profit transfer agreement in group configurations. The granting of an extraordinary right of termination in these cases gives the Parties the necessary flexibility to implement organizational measures in the event of restructuring measures despite the existing tax group.

2.6 Costs – Clause 6 of the Agreement

Clause 6 of the Agreement regulates the bearing of costs in connection with the conclusion of the Agreement. Under Clause 6 of the Agreement, all costs are borne by the Controlling Entity.

2.7 Final provisions – Clause 7 of the Agreement

Clause 7.1 of the Agreement contains a so-called severability clause, according to which the validity of the remaining provisions of the Agreement remains unaffected by the complete or partial voidness, ineffectiveness, or unenforceability of a contractual provision. The void, ineffective, or unenforceable provision will be replaced by a provision that comes as close as possible to what the Parties would have intended according to the sense and purpose of this Agreement if they had considered this with regard to the voidness, ineffectiveness, or unenforceability.

Clause 7.2. of the Agreement extends Clause 7.1. to the cases of voidness, ineffectiveness, or unenforceability of the performance and time provisions contained in the Agreement. Should a contractually regulated performance or time provision be void, ineffective, or unenforceable, the legally permissible performance or time provision that comes closest to the one actually agreed will be deemed agreed.

## 3. Economic and tax reasons for the conclusion of the Profit Transfer Agreement

The Agreement is a necessary precondition for the formation of a tax group for corporate income tax and trade tax purposes between the tax group parent and the tax group company. As a result of such a fiscal unity, the profits and losses of the Controlled Entity are directly attributed to the

Controlling Entity for tax purposes, so that profits of one party are offset against losses of the other party (*consolidation of results*). In addition, in the case of an existing consolidated tax group for corporate income tax and trade tax purposes, any profit transfers by the Controlled Entity to the Controlling Entity are not treated as at least partially taxable profit distributions, which are subject to capital gains tax – even though they are usually refundable in principle. Depending on the earnings situation of the companies involved, this can lead to tax advantages.

There is no economically reasonable alternative to the formation of a tax group for corporate income tax and trade tax purposes and thus to the conclusion of the Agreement. The objectives pursued with the creation of the fiscal unity would not be achievable through a different legal or tax arrangement, particularly against the background of the current shareholding structure and the planned consolidation of results between the parent company and the subsubsidiary.

For the Controlled Entity, the Agreement results in advantages due to the associated financial security, since the Controlling Entity must compensate for any losses incurred by the Controlled Entity during the term of the Agreement.

From the point of view of the shareholders of the Controlling Entity, no particular consequences result from the Agreement, apart from the described obligation to absorb losses. In particular, no compensation is due to or for the shareholder. In addition, the shareholder of the Controlled Entity undertook to declare in the Shareholders' Meeting of the Controlled Entity the waiver of a settlement and any compensation payments and to consent to the Agreement in a notarial deed.

## 4. No compensation and no settlement

The Agreement does not provide for any compensation or settlement for outside shareholders of the Controlled Entity. This is a case of a tax group between the parent company and its sub-subsidiary (*Klammerorganschaft*). The parent company, as the Controlling Entity, concludes the Agreement bypassing its direct subsidiary, the shareholder of the Controlled Entity. According to unanimous opinion, the shareholder of the Controlled Entity as a wholly owned subsidiary of the Controlling Entity is not to be regarded as an outside shareholder of the Controlled Entity, so that there is no obligation on the part of the Controlling Entity to compensate and indemnify the shareholder.

In addition, the shareholder agrees to the Agreement in a notarial deed and expressly declares the waiver of compensation and settlement claims.

## 5. Agreement review

Under Section 293b (1) German Stock Corporation Act (AktG), the Agreement must be audited by an expert auditor if the Controlling Entity does not directly hold all shares in the Controlled Entity. In the present constellation of the tax group between the parent company and its sub-subsidiary (*Klammerorganschaft*), the shareholder of the Controlled Entity directly holds all the shares in the Controlled Entity. For the sake of good order, the signatories have therefore decided to have the Agreement audited by an independent auditor. For this purpose, the Parties have proposed three independent auditing firms to the competent District Court of Koblenz for appointment as contract auditors within the meaning of Section 293b (1) German Stock Corporation Act (AktG) under Section 293c of the German Stock Corporation Act (AktG). Of these, the District Court of Koblenz has appointed Ebner Stolz GmbH & Co. KG Wirtschaftsprüfungsgesellschaft Steuerberatungsgesellschaft, Cologne, as the contract auditor.

In its audit report, the contract auditor comes to the following audit conclusion: "According to the final result of our dutiful audit in accordance with Section 293b of the German Stock Corporation Act (AktG), based on the documents, books, and writings submitted to us and the explanations and evidence provided to us, we confirm that CGM Clinical Europe GmbH, Koblenz, has no outside shareholders. The profit transfer agreement with CompuGroup Medical SE & Co. KGaA, Koblenz, therefore rightly waived the determination of compensation and settlement."

## 6. Conclusion

In summary, the signatories therefore conclude that the Agreement is beneficial to both Parties.

*[Signature pages follow]*

*[Signature pages to the Joint Report on the Profit Transfer Agreement between CompuGroup Medical SE & Co. KGaA and CGM Clinical Europe GmbH].*

**CompuGroup Medical Management SE**

Koblenz, March 29, 2021

| ____________________ | ____________________ |
| --- | --- |
| Dr. Dirk Wössner<br>Executive Director | Frank Brecher<br>Executive Director |
| Dr. Ralph Körfgen<br>Executive Director | Dr. Eckart Pech<br>Executive Director |
| Michael Rauch<br>Executive Director | Hannes Reichl<br>Executive Director |

**CGM Clinical Europe GmbH**

Koblenz, March 29, 2021

| Christoph Becker<br>Managing Director | Bernhard Calmer<br>Managing Director |
| --- | --- |

Michael Schösser
Managing Director